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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

|                          |   |                              |
|--------------------------|---|------------------------------|
| In the Matter of:        | ) |                              |
|                          | ) | DOCKET NO. CWA-10-2012-0117  |
|                          | ) |                              |
| CITY OF CALDWELL, IDAHO, | ) |                              |
|                          | ) | <b>CONSENT AGREEMENT AND</b> |
|                          | ) | <b>FINAL ORDER</b>           |
| Respondent.              | ) |                              |

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the City of Caldwell, Idaho (Respondent) agrees to issuance of, the Final Order contained in Part V of this CAFO.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid

waste, sewage, sewage sludge, biological materials, and industrial and municipal waste.

“Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.2. Respondent is a city duly organized and existing under the laws of Idaho. Respondent is thus a “municipality” as defined in CWA Section 502(4), 33 U.S.C. § 1362(4), and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.3. At all times relevant to this action, Respondent was the owner and/or operator of a wastewater treatment plant located at 621 Cleveland Boulevard, Caldwell, Idaho (Facility).

3.4. The Facility, which was under Respondent’s control at all times relevant to this action, discharges domestic wastewater containing pollutants from Outfall 001 into the Boise River. Outfall 001 is a “point source” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.5. The Boise River flows into the Snake River. The Snake River is an interstate water which is susceptible to use in interstate and foreign commerce, and thus is a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a “water of the United States” as defined in 40 C.F.R. § 122.2. Therefore, the Boise River is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a “water of the United States” within the meaning of 40 C.F.R. § 122.2.

3.6. Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-002150-4 (Permit). The Permit became effective on February 1, 1999 and expired on February 2, 2004. The City submitted a NPDES permit application on June 10, 2003; therefore, the Permit has been administratively extended pursuant to 40 C.F.R. § 122.6.

3.7. Section I.A. of the Permit establishes effluent limitations for the discharge from Outfall 001. These effluent limits include, but are not limited to, total suspended solids (TSS) and total ammonia.

3.8. Section II.B. of the Permit requires Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report (DMR). When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limit each day of the month in which the exceedance occurred. When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one violation.

3.9. Section I.A. of the Permit contains a seasonal average monthly concentration effluent limit for total ammonia in discharges from the Facility of 1.09 mg/L from March 1st to June 30th of each year. Between December 2010 and June 2011, Respondent violated this limit a total of three (3) times, constituting ninety-two (92) violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| March 2011         | 31                   |
| April 2011         | 30                   |
| May 2011           | 31                   |

3.10. Section I.A. of the Permit contains a seasonal daily maximum concentration effluent limit for total ammonia in discharges from the Facility of 2.2 mg/L from March 1st through June 30th of each year. Between December 2010 and June 2011, Respondent violated this limit a total of fourteen (14) times, constituting fourteen (14) violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| March 2011         | 5                    |
| April 2011         | 4                    |
| May 2011           | 4                    |
| June 2011          | 1                    |

3.11. Section I.A. of the Permit contains a seasonal average monthly concentration effluent limit for total ammonia in discharges from the Facility of 2.53 mg/L between November 1st and February 28th of each year. Between December 2010 and June 2011, Respondent violated this limit a total of two (2) times, constituting fifty-nine (59) violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| January 2011       | 31                   |
| February 2011      | 28                   |

3.12. Section I.A. of the Permit contains a seasonal daily maximum concentration effluent limit for total ammonia in discharges from the Facility of 5.07 mg/L between November 1st and February 28th of each year. Between December 2010 and June 2011, Respondent violated this limit a total of four (4) times, constituting four (4) violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| December 2010      | 1                    |
| January 2011       | 1                    |
| February 2011      | 2                    |

3.13. Section I.A. of the Permit contains a seasonal average monthly mass effluent limit for total ammonia in discharges from the Facility of 77.09 lbs/day between March 1 and June 30 of each year. Between December 2010 and June 2011, Respondent violated this limit a total of three (3) times, constituting ninety-two (92) violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| March 2011         | 31                   |
| April 2011         | 30                   |
| May 2011           | 31                   |

3.14. Section I.A. of the Permit contains a seasonal daily maximum mass effluent limit for total ammonia in discharges from the Facility of 155.59 lbs/day between March 1st and June 30th of each year. Between December 2010 and June 2011, Respondent violated this limit a total of thirteen (13) times, constituting thirteen (13) violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| March 2011         | 5                    |
| April 2011         | 4                    |
| May 2011           | 4                    |

3.15. Section I.A. of the Permit contains a seasonal daily maximum mass effluent limit for total ammonia in discharges from the Facility of 358.57 lbs/day between November 1st and February 28th of each year. Between December 2010 and June 2011, Respondent violated this limit in December 2010 and February 2011, constituting two (2) violations.

3.16. Section I.A. of the Permit contains an average weekly concentration effluent limit for TSS in discharges from the Facility of 45 mg/L. Between December 2010 and June 2011, Respondent violated this limit in December 2010, constituting thirty-one (31) violations.

3.17. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated section 1311 . . . of this title, or has violated any permit condition or limitation” in an NPDES permit. Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each violation, up to a maximum of \$177,500.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent’s economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$11,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier’s check or certified check payable to the order of “Treasurer, United States of America” and delivered via United States mail to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Chae Park  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.

1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest

shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

4-12-12

FOR CITY OF CALDWELL, IDAHO:



\_\_\_\_\_  
GARRET NANCOLAS  
Mayor  
City of Caldwell

DATED:

4/25/2012

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



\_\_\_\_\_  
EDWARD J. KOWALSKI  
Director  
Office of Compliance and Enforcement

## **V. FINAL ORDER**

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the State of Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 13<sup>th</sup> day of June, 2012.

  
\_\_\_\_\_  
THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 10

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Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of City of Caldwell, Docket No.: CWA-10-2012-0117**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

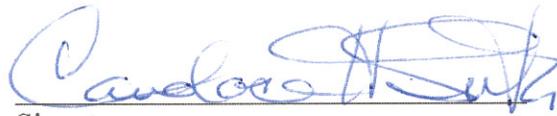
The undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Weber  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Brent Orton  
Public Works Director / City Engineer  
411 Blaine Street  
Caldwell, Idaho 83605

DATED this 13<sup>th</sup> day of June, 2012

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10